

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §313.1-313.27, concerning the Edwards Aquifer.

The proposed repeal of Chapter 313 imposes a numbering change that implements a reorganization of commission rules, by moving this chapter to the area of Title 30 of the Texas Administrative Code that is being reserved for rules related to water programs in Chapters 200 - 299.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these proposed sections are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. There are no significant fiscal implications anticipated for state government, although some changes in the costs of projects could be realized by state agencies operating in the geographical areas affected by these sections. These fiscal implications could be positive or negative depending on the type of project. These impacts are not anticipated to represent major changes in the costs to any state agency. Fiscal implications are also anticipated for units of local government. For example, local government will be impacted by the requirement to construct temporary erosion and sedimentation controls pursuant to proposed §213.5(g). Also, while the notification and inspection requirements for sewer line trenches are not new, this process has been expanded to include lift station excavations under §213.5 (f). However, some cost savings to local governments may occur. These cost effects cannot be estimated at this time and are not anticipated to vary as a direct result of any provision of the proposed rule.

Mr. Minick has also determined that for the first five years these proposed sections are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be the prevention of further degradation of the quality of water resources in newly developed urban and suburban areas, reduction of the risk to human health and safety from degradation of water quality, the preservation of aquatic and related biological resources, and the maintenance of the quality of public and recreational resources.

Economic costs are anticipated for persons required to comply with the new requirements under this proposed chapter. Unless otherwise provided under this chapter, the owner of an existing or proposed site such as a residential or commercial development, sewage collection system, or aboveground or underground storage tank facility for static hydrocarbons or hazardous substance, who proposes new or additional regulated activities under this chapter, must file all appropriate applications and planning material with the executive director for approval. No changes to the application fees are proposed. Costs implications of the rule may be associated with the following changes.

Under proposed §213.5(b)(3), a geologic assessment will not be required for single-family residential subdivisions on less than ten (10) acres. However, there will be a potential increase in cost because the current rule does not require a geologic assessment for a single-family residential subdivision with less than 24 lots. The potential difference is that, under the current rules, 24 lots could be proposed on 100 acres and no geologic assessment would be required.

Under proposed §213.5(b)(3), the requirement for a downgradient assessment of area geology has been decreased from 1 mile to one-half mile. This will result in a cost savings.

Under proposed §213.5(c)(4)(D), a geologic assessment will have to be performed 50 feet on each side of the path of the proposed sewer line. While this new requirement will result in an initial cost, a cost savings should result ultimately during the construction phase since it allows for pre-planning to address sensitive features. Under the current rule, all construction must stop while plans are designed and approved.

Under proposed §213.5(d)(1)(B), new UST systems are required be located a minimum horizontal distance of 150 feet from any well or sensitive feature unless the system uses tertiary containment. This will result in an increased cost depending on the location of the UST.

Proposed §§213.5(b)(4) and 213.5(e)(3), require description of measures to contain spills for temporary ASTs storing greater than 250 gallons and require these facilities be located a minimum horizontal distance of 150 feet from any well or sensitive feature. Both temporary and permanent facilities that store greater than 500 gallons are required to be constructed within a controlled drainage area of impervious material that is sized to contain one and one-half times the storage capacity of the facility. This new requirement represents a cost increase because the current rules do not require containment for temporary ASTs. However clean-up of spills of hazardous substances has always been required under the Texas Hazardous Substances Spill Prevention and Control Act. This section also requires permanent AST facilities of 500 gallon to 1,000 gallon to file and comply with an ASTFP.

Under §213.5(f)(2)(A)(i), a geologist must certify that a lift station excavation has been inspected for sensitive features. Section 213.5(f)(2)(B) also requires a geologist to certify that a UST excavation has been inspected for sensitive features. These new requirements could result in a cost, however, the current rule already requires that sensitive features be address if they are encountered during construction.

Under §213.5(g), temporary erosion and sedimentation controls will be required for the installation of utility lines that do not carry pollutants. This will result in an additional cost because these types of facilities are currently exempt from requirements under Chapter 313.

Under §§213.8(a)(5) and (b)(3), new Type I municipal solid waste landfills are prohibited on the recharge or transition zone. This should not result in either a cost increase or decrease because the topography, availability of soil liner materials, and geologic factors are unsuitable and uneconomical for locating these facilities in these areas.

The cost implications of these requirements for any project will vary on a case-by-case basis with the type of project, its size and location, the type of construction and other site-specific conditions. For large or particularly complex developments with significant potential for impact, the total monetary implications could be significant. It is not anticipated that the total, incremental financial effects of the new requirements will increase total construction and development costs by a significant percentage. Many projects have no significant increases and could, in fact, realize some cost savings. There may also be indirect cost savings as a result of the reduction of contamination risks and the associated

liability cost. Many of these fiscal implications will affect small businesses. However, the magnitude of costs or costs savings will vary with the size and individual characteristics of proposed developments, but not directly with the size of the affected firm.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Tex. Gov't Code Ann. §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to regulate activities having the potential for causing pollution of the Edwards Aquifer. The rule will substantially advance this specific purpose by clarifying the procedures and criteria to be used by the commission in the review and approval of Edwards Aquifer plans for regulated activities under this section. Promulgation and enforcement of this rule could affect private real property which is the subject of the rule.

However, there are exceptions to the application of Chapter 2007 of the Texas Government Code. One exception exists since the possibility of degradation to the quality of the water supply presents a real and substantial threat to public health and safety (see Texas Gov't Code Sec. 2007.003(b)(13)). The proposed rule will significantly contribute to the prevention of this threat. The Edwards Aquifer is the sole or primary source of water for over 1.5 million people. To the extent this rule regulates activities which have the potential for causing significant pollution of the Edwards Aquifer over the recharge and transition zones, it significantly advances health and safety. This rule is necessary to carry out the stated authority of the commission to protect human health and the environment.

Additionally, regardless of the applicability of §2007.003(b)(13) of the Act, §2.007.003(c) also applies to this rule. Subsection (c) exempts the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995 and that prevents the pollution of a reservoir or an aquifer designated as a “sole source” aquifer. This exception applies to the enforcement or implementation of the entire rule even though only part of the Edwards has been designated as a sole source aquifer (See 40 Fed.Reg. 58344 (1975) and 53 Fed.Reg. 20897 (1988)). Current Chapter 313 rules regulating activities over the recharge or transition zones of the Edwards Aquifer have been in effect since March 1990.

The activities addressed by the rule are those that may pose a threat to water quality. This rule specifically applies to the Edwards Aquifer and is not intended to be applied to any other aquifers in the state of Texas. Unless otherwise provided under this chapter, the owner of an existing or proposed site such as a residential or commercial development, sewage collection system, or aboveground storage tank facility for static hydrocarbons or hazardous substance, who proposes new or additional regulated activities under this chapter, must file all appropriate applications with the executive director for approval.

Changes in the proposed rule would prohibit Type I, II or III municipal solid waste disposal facilities to be located over the recharge zone. However, there are no known permitted or proposed Type I, II or III municipal solid waste facilities currently located within the recharge or transition zones of the aquifer. Generally, the topography, availability of soil liner materials, and geologic factors are unsuitable and uneconomical for locating municipal solid waste landfills on the recharge zone. Other

activities with high potential for pollution, including new confined animal feeding operations and disposal of hazardous waste, are already prohibited under the existing Edwards Aquifer rule.

Public hearings on the proposal will be held in San Antonio on September 4th at 7:00 p.m. in the San Antonio City Council Chambers, Municipal Plaza Building at Main and Commerce Streets, 103 Main Plaza, San Antonio; and in Austin on September 10th at 2:00 p.m at the Texas Natural Resource Conservation Commission Office Complex, Building E., Room 201S, 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion by the audience during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log No. 96114-213-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640; or faxed to (512) 239-5687. All comments sent by fax must be followed by an original, signed hard copy for the agency's records. Written comments must be received by 5:00 p.m., September 16, 1996. For further information concerning this proposal, please contact Mary Ambrose, Water Policy and Regulations Division at (512) 239-4813.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The repealed sections are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 26.341 and Texas Health and Safety Code, §§361.024 and 366.012 which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Codes and other laws. Texas Water Code §26.046 which require the commission to hold public hearing to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution and §26.0461 which allows the commission to impose fees for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules, §26.121 prohibiting unauthorized discharges, and §28.011 which provides for the commission to make and enforce rules and regulations for the protection and preservation of the quality of underground water.

There are no other codes, statutes, or rules that will be effected by this proposal.

**SUBCHAPTER A : EDWARDS AQUIFER IN MEDINA, BEXAR,
COMAL, KINNEY, UVALDE, HAYS, TRAVIS AND
WILLIAMSON COUNTIES
§§313.1 - 313.6, 313.8 - 313.15**

These sections are repealed under the Texas Water Code, §§5.103, 5.105, 26.011, 26.046, and 28.011 which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties as provided by the Code and other state law and under the Texas Water Code, §26.0461, which provides the commission with the authority to impose fees for the filing of certain plans subject to review by the agency under its rule for the protection of the Edwards Aquifer.

- §313.1. Purpose.
- §313.2. Applicability.
- §313.3. Definitions.
- §313.4. Water Pollution Abatement Plan for Regulated Development.
- §313.5. Organized Sewage Collection Systems.
- §313.6. Wastewater Treatment and Disposal Systems.
- §313.8. Plugging of Abandoned Wells.
- §313.9. Prohibited Activities.
- §313.10. Static Hydrocarbon and Hazardous Substance Storage in Underground Storage Tanks.
- §313.11. Static Hydrocarbon Storage in Aboveground Storage Tanks.
- §313.12. Exceptions.

§313.13. Review of Decisions of the Executive Director.

§313.14. Enforcement.

§313.15. Underground Water Conservation Districts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas on

SUBCHAPTER B: APPLICATION REQUIREMENTS AND PROCESSING

FEES FOR APPROVAL OF PLANS AND AMENDMENTS

§§313.21 - 313.27

These sections are repealed under the Texas Water Code, §§5.103, 5.105, 26.011, 26.046, and 28.011 which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties as provided by the Code and other state law and under the Texas Water Code, §26.0461, which provides the commission with the authority to impose fees for the filing of certain plans subject to review by the agency under its rule for the protection of the Edwards Aquifer.

- §313.21. Required Submission.
- §313.22. Person or Entity Required to Apply.
- §313.23. Signatories to Applications.
- §313.24. Contents of Application.
- §313.25. Application Fees.
- §313.26. Fees Related to Requests for Extensions.
- §313.27. Fee Schedule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas on